

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

IN RE:	)	
	)	CHAPTER 7
JAMES EDWARD CADY, JR.	)	CASE NO. 93-50258
	)	
Debtor	)	
	)	
	)	
RENTRAK CORPORATION	)	
	)	
Plaintiff	)	
	)	
v.	)	ADVERSARY PROCEEDING
	)	NO.93-05024
JAMES EDWARD CADY, JR.	)	
	)	
Defendant/Third Party	)	
Plaintiff	)	
	)	
v.	)	
	)	
WILLIE EUGENE SAPP and	)	
RONNIE LEE TUCKER	)	
	)	
Third Party Defendants	)	
	)	

**MEMORANDUM OPINION**

This Court's jurisdiction arises pursuant to 28 U.S.C. § 1334(b) .

**FACTS**

Willie Eugene Sapp ("Sapp") and Ronnie Lee Tucker

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<sup>1</sup> The record is unclear whether the business arrangement was a partnership or a corporation.

("Tucker") were formerly engaged<sup>2</sup> in a venture known as Video Odyssey. Video Odyssey was in the business of renting videocassettes to the general public for a fee.

On May 10, 1989, Video Odyssey entered into a leasing agreement (the "Agreement") with the Rentrak Corporation ("Rentrak") for 1267 videocassettes which Video Odyssey would in turn rent to the general public. The Agreement called for Video Odyssey to remit a portion of the rental fees to Rentrak as consideration. Video Odyssey was obligated to provide Rentrak with transaction reports so that transaction fees could be calculated and assessed against Video Odyssey's account. Both Debtor and Tucker were personally obligated under the Agreement as guarantors.

On June 13, 1990, Debtor and Tucker sold Video Odyssey to their then employee James Cady ("Debtor"). Debtor was 19 years old at the time. The Agreement was assigned to Debtor as part of the sale, and Rentrak consented to the assignment. Several months later<sup>3</sup>, Sapp and Tucker "took over"<sup>4</sup> Video

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<sup>2</sup> The record is unclear whether the business arrangement was a partnership or a corporation.

<sup>3</sup> The record does not provide a clear time frame for these events.

<sup>4</sup> The record is unclear as to how Debtor and Tucker "took over" Video Odyssey. The court has not been supplied with any documents pertaining to any transfer of the business from Cady to Debtor and Tucker. Interrogatories reveal only that the transfer was not in the form of a traditional sale.

Odyssey from Debtor.

On August 5, 1991, Rentrak gave notice of termination of the Agreement for failure to submit the transaction reports called for in the Agreement. Upon termination of the Agreement, Video Odyssey<sup>5</sup> failed to return the video cassettes to Rentrak. On September 10, 1991, Rentrak filed suit against Debtor in the United States District Court for the District of Oregon for breach of contract and conversion of the videocassettes. On December 23, 1991, Cady entered into a stipulated judgment with Rentrak admitting liability. The District Court of Oregon awarded damages in the amount of Twenty-Five Thousand Eight Hundred Twenty-Two Dollars and Twelve Cents (\$25,822.12).

On May 10, 1993, Debtor filed his petition for relief under Chapter 7 of the Bankruptcy Code. On October 18, 1993, Debtor converted his bankruptcy case to one under Chapter 13 of the Bankruptcy Code. On October 15, 1993, Rentrak brought the present adversary proceeding seeking a determination from this Court that Debtor is liable for conversion of the subject videocassettes as well as \$9,554.83 in unremitted transaction fees. Rentrak further seeks a determination that such debt is nondischargeable pursuant to 11 U.S.C. §§ 523(a)(4) and

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<sup>5</sup> The record does not indicate who had control over the videocassettes at this time. Indeed, this issue is at the heart of Rentrak's claim for conversion of the videocassettes.

523(a)(6). Debtor has filed complaints against both Cady and Tucker seeking contribution for any amounts for which he may be found liable.

## **ANALYSIS**

### **Jurisdiction**

The jurisdiction of this Court is governed by 28 U.S.C. § 1334.<sup>6</sup> Under section 1334, there are four species of matters which the Bankruptcy Court has jurisdiction to hear:

- (1) all cases under title 11;
- (2) all civil proceedings arising under title 11;
- (3) all civil proceedings arising in cases under title 11;
- (4) all civil proceedings related to cases under title 11.

28 U.S.C. § 1334(a) and (b); Wood v. Wood (Matter of Wood), 825 F.2d 90, 92 (5th Cir. 1987).

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<sup>6</sup> Section 1334 provides in pertinent part:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

The first category, "cases under title 11", refers to the original bankruptcy petition from which all adversary proceedings originate. 28 U.S.C. § 1334(a); Wood at 92. The present adversary proceeding is not one of the "cases under title 11" for the purposes of section 1334(a).

The second category proceeding "arising under" title 11 are matters which rely upon a cause of action either created or determined by a provision of title 11 such as an action by the trustee to avoid a preference.<sup>7</sup> The third category, proceedings "arising in" cases under title 11 are those administrative matters which, although not based on any right expressly created by title 11, nonetheless would not exist outside of bankruptcy such as the filing of a proof of claim or an objection to discharge (Wood at 97).<sup>8</sup> These second and

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<sup>7</sup> (Wood at 97.)

<sup>8</sup> The meaning of "arising in" proceedings is less than clear. The guidance which is provided by Wood suggests that "arising in" proceedings are those proceedings which, although based on state law, could only exist in bankruptcy. The proceeding sub judice necessitates a review of "arising in" jurisdiction. Although Rentrak's complaint asserts the nondischargeability of Sapp's debt to Rentrak, Rentrak is yet to establish the existence of said debt. Conversion is a state law concept which is not defined in the Bankruptcy Code. Asserting a claim based on state law principles of conversion is not the same as asserting the nondischargeability of an established debt for conversion. The former is exclusively a question of state law, the latter, although based on state law, could not exist outside of bankruptcy. The former is a noncore proceeding, the latter is a core proceeding "arising in" a case under title 11. The distinction is subtle, and yet this court's jurisdiction depends upon such subtlety in the wake of Marathon.

third categories of proceedings refer to those matters "at the core of the federal bankruptcy power." Marathon v. Northern Pipelines, 458 U.S. 50, 71 (1982). The Bankruptcy Code considers such matters core proceedings. 28 U.S.C. § 157(b) (2); Wood at 96-97.

The case at issue here involves an unliquidated claim asserting a state law cause of action for breach of contract, conversion and contribution. These claims neither rely upon provisions of title 11 nor depend upon bankruptcy for their existence. These claims neither arises under title 11 nor arises in a case under title 11. Consequently, the case before the Court is a noncore matter for the purposes of 28 U.S.C. § 157. Wood at 96.

The final category of matters over which this Court may exercise jurisdiction are those proceedings which are "related to" a case under title 11. The test to determine if a proceeding is "related to" a case under title 11 is if the outcome of the state proceeding could conceivably have an effect on the administration of the bankruptcy estate. In re Lemco Gypsum, Inc., 910 F.2d 784, 788 (11th Cir. 1990). In the present case, finding liability for conversion, breach of contract or by contribution on the part of Debtor or any of the third party defendants named herein would effect the administration of Debtor's estate. Jurisdiction is therefore proper as a proceeding "related to" a case under title 11. 28

U.S.C. § 1334(b) .

### **Abstention**

Having found that the Court may hear this matter, the Court now turns to the question of whether the Court should hear these state law issues, or if the Court should abstain as Tucker urges.

The Bankruptcy Code provides for two types of abstention: discretionary and mandatory.<sup>9</sup> Tucker concedes, and the Court agrees, that this case is not subject to the mandatory abstention provisions of 28 U.S.C. § 1334(c)(2). Therefore, the Court will limit its analysis to the discretionary abstention provisions of 28 U.S.C. § 1334(c)(1).

The Bankruptcy Code gives this Court the discretion to abstain in the interest of justice, comity with state courts or respect for state law.<sup>10</sup> Relevant considerations include:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable state law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy

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<sup>9</sup> 28 U.S.C. §§ 1334(c)(1) and 1334(c)(2) respectively.

<sup>10</sup> 28 U.S.C. § 1334(c)(1) .

court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than the form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy Court, (9) the burden of any docket, (10) the likelihood that the commencement of the proceeding in bankruptcy Court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.<sup>11</sup>

Upon due consideration of the factors outlined above as well as those provided in the Bankruptcy Code, this Court believes that abstention is warranted.

The assertions of liability for breach of contract, conversion and contribution are all based on state law. These state law claims can be severed from the dischargeability issues, both allowing the state court to enter appropriate judgments and ensuring that all the parties involved receive

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<sup>11</sup> In re Republic Reader's Service, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).



the full and fair consideration to which they are entitled.<sup>12</sup> Abstention in this matter will in no way jeopardize the efficient administration of Debtor's estate, and will enable all nondebtor parties to avail themselves of the remedies which state law provides.<sup>13</sup>

The issue of this Court's jurisdiction over this proceeding is also of concern. As stated above, this Court is of the opinion that this adversary proceeding is a noncore proceeding. If this Court were to hear the state law issues, it would not be able to render a final judgment.<sup>14</sup>

Overall, the efficient administration of the estate would best be served by abstention. The Court further finds that cause exists for limited relief from the automatic stay for the purpose of allowing the parties to prosecute their claims for conversion, breach of contract and contribution and reduce

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<sup>12</sup> The Constitution of the State of Georgia ensures a right to a trial by jury in civil matters. GA CONST. art. 1, § 1, ¶ XI; O.C.G.A. § 9-11-38. There is some support for the notion that this court does not have the authority to conduct jury trials in noncore matters. In re Cinematronics, Inc., 916 F.2d 1444 (9th Cir. 1990).

<sup>13</sup> This appears to be a no asset case. Any delay in fixing the liabilities will not affect distribution of assets to creditors.

<sup>14</sup> 28 U.S.C. § 157(c)(1) allows this court to propose findings of fact and conclusions of law to the district court for de novo review. Any findings which the parties object to could be relitigated. Since there is a competent state forum available to hear the case, it would be inefficient to retain it here in its noncore status.

such claims to judgment.<sup>15</sup> This Court will conduct a trial as to the issues of dischargeability following a determination by the state court establishing and apportioning liability among the various parties.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

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JAMES D. WALKER, JR.  
United States Bankruptcy Judge

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<sup>15</sup> 11 U.S.C. § 362(d) (1) .

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION**

IN RE:	)	
	)	
WILLIE EUGENE SAPP	)	CHAPTER 13
	)	CASE NO. 93-50421
	)	
Debtor	)	
	)	
RENTRAK CORPORATION	)	
	)	
Plaintiff	)	
	)	
v.	)	ADVERSARY PROCEEDING
NO.	)	
	)	93-05034
WILLIE EUGENE SAPP	)	
	)	
Defendant/Third Party	)	
Plaintiff	)	
	)	
v.	)	
	)	
JAMES EDWARD CADY, JR. and	)	
RONNIE LEE TUCKER	)	
	)	
Third Party Defendants	)	
	)	

**ORDER**

In accordance with the memorandum opinion entered this date; it is hereby

**ORDERED** that third party defendant Ronnie Lee Tucker's Motion for Abstention is granted; and it is hereby further

**ORDERED** that the parties are relieved from the automatic stay provisions of 11 U.S.C. § 362, and are free to prosecute their claims as described in the accompanying memorandum opinion.



**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 1994.

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JAMES D. WALKER, JR., Judge  
United States Bankruptcy Court